

**Testimony of**

**David W. Regan**

**On Behalf of the**

**National Automobile Dealers Association**

**Before the**

**Commerce, Trade and Consumer Protection Subcommittee  
Of the House Energy and Commerce Committee**

**On**

**“Car Title Fraud: Issues and Approaches for Keeping  
Consumers Safe on the Road”**

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## **SUMMARY OF THE TESTIMONY OF DAVID W. REGAN**

**THE PROBLEM – The combination of the confusing 51-jurisdiction state motor vehicle titling regime and the loss mitigation practices of automobile insurance companies invites fraud.** Any unscrupulous rebuilder can repair or refurbish a wrecked or flood damaged car (typically a late model car “totaled” by an insurance company) and obtain a “clean” or “washed” title in a state with weak title disclosure rules. The new title will not reference the damage, leaving the buyer (consumer or dealer) to rely only on a physical inspection of the vehicle to expose any damage. The fraudulent rebuilders enjoy substantial profit margins because: 1) state motor vehicle titling laws are confusing, contradictory and incomplete; 2) insurance companies have a short-term economic interest in under-reporting total loss vehicle data; and 3) public and private sectors have failed to exploit existing technology to produce timely electronic transparency for motor vehicle title histories. DMV’s document transactions after the fact, and vehicle history services do not have access to current title information. Worse, DMVs and title history services may never get information about vehicles totaled by insurance companies, which have an incentive to underreport the damage of totaled vehicles to obtain higher prices at salvage auctions.

**THE SOLUTION – More transparency, more timeliness, and more technology to provide buyers more complete and reliable VIN based vehicle histories before a sale, and penalties for intentional circumvention of disclosure of severely damaged vehicles.**

Transparency: More complete vehicle history data and total loss data is needed. Insurance companies should provide VIN-based disclosure for all totaled vehicles. All states should “carry forward” prior brands when issuing new titles and states should brand registrations as well as titles. States should at least brand vehicles within four basic categories to capture the most relevant data on severe damage: salvage, rebuilt salvage, flood, and non-repairable. Congress should require the Department of Justice to initiate and issue a rule (delineated in the 1992 Anti-Car Theft Act) requiring insurance companies, salvage auctions and junkyards to report VIN-based information on total loss, salvage, and junk vehicles to the National Motor Vehicle Title Information System (NMVTIS). The rule should require private information industry involvement.

Timing: More current vehicle data is needed. An essential element to this solution is the ability of consumers to access VIN based vehicle data and enhanced access to DMV vehicle title data. All states should be encouraged to move to electronic titling of motor vehicles, should make existing title data available on a cost structure that reflects electronic records rather than paper records, and work with the private sector to reduce the timeframe that the data reaches consumers.

Technology: More accessible vehicle history data is needed. The information industry in the private sector should have access to insurance company information for VIN based total loss vehicles and salvage auction sales data. Additionally, DMVs should make title data commercially available in bulk on a daily basis to the information industry. This information, marketed to consumers by private sector companies, would enable consumers to have more complete information to make an informed decision before purchasing the vehicle.

## **MORE TIMELY TOTAL LOSS DATA AND TITLE DATA ARE NECESSARY TO COMBAT TITLE FRAUD**

My name is David Regan. I am Vice President of Legislative Affairs for the National Automobile Dealers Association. NADA's 20,000 franchised auto and truck dealerships sell, service and repair new and used car and trucks, all makes and models from the Mini Cooper to the Mack Truck. NADA's membership penetration is 93% of all domestic and import dealerships. The majority of NADA's members are small, family-owned and community-based businesses, and NADA's members employ more than one million people nationwide.

### **Overview of the Title Fraud Problem**

At NADA, we applaud the full committee and this subcommittee for focusing on such an important national issue. According to news accounts, flooding caused by the Gulf Coast hurricanes last fall damaged more than 500,000 vehicles. Unfortunately, we are learning that many of these severely damaged vehicles are being reconditioned and sold to unsuspecting buyers. In an effort to put consumers on notice of the nature of the problem, NADA's website ([www.nada.org](http://www.nada.org)) contains tips on how to spot a flood vehicle. However, increased public awareness is only a part of the solution.

This problem is not limited to "Katrina cars." Flooding in New England and North Carolina and other areas of the nation has led to countless other flood vehicles. Moreover, cars severely damaged in accidents are a major part of the title fraud problem as well. Last year, we believe that insurance companies totaled approximately five million vehicles. Whenever an insurance company deems a car to be "totaled" as a result

of collision, theft, or fire damage, the vehicle can be rebuilt and given a clean title that does not disclose damage.

**Each year thousands of totaled vehicles are fraudulently sold to unsuspecting buyers as undamaged vehicles.** These vehicles may then resurface in the classified section of your local newspaper, at a wholesale auto auction, in consumer-to-consumer sale, or as a “trade in” on the lot of a franchised dealer. The fraudulent rebuilders enjoy substantial profit margins because: 1) state motor vehicle titling laws are confusing, contradictory and incomplete; 2) insurance companies have a short-term economic interest in under-reporting total loss vehicle data; and 3) public and private sectors have failed to exploit existing technology to produce timely electronic transparency for motor vehicle title histories.

Today, I will explain how confusing state title laws and insurance company practices benefit fraudulent rebuilders and resellers and suggest some potential legislative remedies.

## **DISPARITIES IN STATE TITLING LAWS CREATE OPPORTUNITIES FOR FRAUD**

**The laws of fifty states and the District of Columbia govern the titling and registration of motor vehicles, which creates a systemic lack of uniformity.** A motor vehicle title documents ownership of a specific vehicle, while a motor vehicle registration provides permission to operate a specific vehicle. Although the trend in state titling laws has been toward more uniformity during the past several years, the 51 jurisdictions still

conduct business 51 different ways. Each jurisdiction has created a distinct paper title, different computer programs to issue and track titles and registration, and a separate, extensive body of statutes and regulations to govern the titling and registration of motor vehicles within their respective borders. Additionally, these discrepancies can be complicated by the informal policies and procedures used by title clerks, which may vary even within jurisdictions.

**In common usage, a “title brand” is a notation on the face of a certificate of title that provides notice to all subsequent purchasers of the damage, condition, or prior use of a vehicle.** A “brand” is a word, symbol or abbreviation printed on the title itself. The 51 titling jurisdictions use a wide variety of brands, such as reconstructed, salvage, rebuilt salvage, rebuilt, restored, reconditioned, junk, non-repairable, taxi, police, flood damage, fire damage, unsafe, and repaired. The complete list is extensive and confusing.

**Because 51 jurisdictions title vehicles 51 different ways, many opportunities for fraud exist.** Under the current system, any unscrupulous rebuilder can repair or refurbish a wrecked or flood damaged car (typically a late model car “totaled” by an insurance company) and then obtain a “clean” or “washed” title in a state with weak title disclosure rules. The new title will contain no reference to the damage, leaving the buyer (consumer or dealer) to rely on a physical inspection of the vehicle to expose the damage or rely on commercially available title history products, such as Auto Check and CARFAX.

**The vehicle history products in the market today are helpful, but a clean vehicle history report is not conclusive evidence that a vehicle has never sustained significant damage.** Vehicle history services can only report information to which they have access. While title history products have improved in the past few years, the recent settlement between State Farm Insurance and the state Attorneys General demonstrates the extent to which the title data within a state department of motor vehicles (DMV) is incomplete. Many state titling laws do not require insurance companies to obtain a salvage title for every totaled vehicle. Moreover, the insurance companies have a powerful economic incentive not to obtain a salvage title. Insurance companies receive higher sale prices for these totaled vehicles at salvage auctions if the titles are not branded. As a result, DMV title data does not include all totaled vehicles.

## **INSURANCE COMPANY PROCEDURES EXACERBATE THE PROBLEM**

**Every year millions of motor vehicles are “totaled” by insurance companies, and many of these vehicles routinely re-enter used car commerce.** Typically, an insurance company “totals” a vehicle when the projected repair costs are too excessive in relation to the fair market value of the vehicle immediately prior to the flood or accident. Once the insurance company has totaled a car, the company usually sends a check to the insured, takes possession of the vehicle, and sells the damaged vehicle at a salvage auction to mitigate loss. Unfortunately, fraudulent rebuilders frequently buy totaled vehicles at salvage auction, repair them, and sell the cars as undamaged to an unsuspecting buyer, thereby reaping huge profits.

**The current loss mitigation model used by insurance companies increases the likelihood of subsequent fraudulent activity.** The attached chart (“How Total Loss Vehicles Reenter the Market”) is an attempt to present the interrelationship between the state titling laws and the loss mitigation model of the insurance companies. While this process may vary from state to state and from insurance company to insurance company, the graphic depicts the lack of transparency that increases risk to subsequent buyers. The red flags indicate the points in the process where fraudulent activity may occur.

## **HOW TOTAL LOSS VEHICLES REENTER THE MARKET**

**Box 1.** The process begins when an insurance company declares a total loss on a vehicle.

**Boxes 2a-2d.** In step 2, the insurance company determines if the nature and extent of the damage requires the insurance company to obtain a salvage or flood title under state law. (The fact that the insurance company declares a total loss does not automatically trigger an obligation under state laws to obtain a salvage title. Each state has specific requirements that control this process.) Under 2a, the insurance company permits the consumer to retain the vehicle after receiving a total loss payment. This creates a red flag because the consumer could repair and resell without disclosure to the unsuspecting consumer in box 5b. In 2b, the company obtains a salvage title, then that title should accompany the vehicle throughout the process and surface in the title history search. However, when the insurance company does NOT obtain a salvage title, as in 2c,

the red flag is noted because the vehicle will go to the salvage auction with a clean title, despite being declared a total loss.

**Boxes 3a-3d.** Step 3 captures the representative transactions at a salvage auction. Reputable buyers at salvage auctions, the recyclers in box 3b, purchase the totaled cars for scrap or parts. The potential for fraud still exists, however, as shown in box 3d. Unscrupulous resellers will purchase the wrecked vehicle solely to obtain a VIN with a clean title. They will then switch that VIN with a stolen vehicle of the same make and model. Box 3c depicts the rebuilders purchasing vehicles at salvage auction.

**Box 4.** This step shows that legal and illegal activity may occur after the vehicle is rebuilt. In box 4a the rebuilder obtains the necessary title documents and fully discloses the nature of the damage when selling to the informed consumer in box 5a. However, in boxes 4a and 4b no such disclosure occurs so a red flag is noted. In 4b, even if the rebuilder received a salvage title at auction, the rebuilder simply washes the salvage title by obtain a clean title in another state. Then the rebuilder sells to the unsuspecting consumer in box 5b without disclosure. The consumer may obtain a title history report, but the data in the private sector database may not be current enough to assist the consumer before the purchase. In box 4c, the rebuilder does not even have to wash the title, because the insurance company never notified the DMV of the total loss. Moreover, the unsuspecting consumer can find no protection at all in relying on a title history because the insurance company has never provided the DMV any information about the total loss.



**If the insurance company fails to obtain a salvage title for the totaled vehicle, no public document may ever exist to put future purchasers on notice that the car was totaled.** The insurance company may fail to report the status of the vehicle to the DMV because:

- a) The state titling law may not trigger an obligation by the insurance company or the original owner to report to the DMV; or
- b) State law may contain a reporting obligation, but the insurance company may fail to comply because of administrative oversight.

**Insurance companies have a powerful economic incentive to oppose more aggressive title laws or to underreport under existing laws.** A total loss vehicle with a clean title is likely to sell at auction for substantially more than the same vehicle with a salvage title. In other words, there is a market-based premium for a clean title and a market based penalty for a salvage title.

**Consumers have exactly the opposite economic interest – they want to know if a vehicle has been declared a total loss.** The decision to total a vehicle is based on a variety of factors and may vary from company to company and from insured to insured, but one fact is abundantly clear – a declaration of total loss is one of the most material factors in determining the value of a vehicle. Every subsequent purchaser would want to know – prior to the sale – if a vehicle has been totaled.

**THE SOLUTION MUST FOCUS ON PRE-TRANSACTION TRANSPARENCY: INSURANCE DATA ON TOTAL LOSS VEHICLES SHOULD BE RELEASED TO THE PUBLIC AND DMV DATA SHOULD BE ENHANCED AND RELEASED MORE QUICKLY.**

The type of disclosure advocated is consistent with the Federal and state privacy laws that strictly limit the use of personal information obtained in the titling process. The Federal Driver Privacy Protection Act and similar state statutes limit the distribution of names and addresses included in title databases. The distribution of VIN-based title branding data or VIN-based total loss vehicle data would not include the personal identifiers protected by those statutes.

More transparency, more timeliness, and more technology are necessary to provide buyers more complete and reliable VIN-specific data before a purchase. All buyers of a used vehicle (consumers, businesses, and even automobile dealers taking a vehicle in trade) have the same economic interest – determining fair market value prior to purchase. A more complete, near real-time title history would provide a more accurate picture of a vehicle's prior condition/use. The insurance companies should be commended for providing some total loss vehicle data for many of the flood vehicles from the hurricanes. The VINs for some of these vehicles are now available on the website of the National Insurance Crime Bureau, but more should be done. The United States should follow the example of the United Kingdom and Australia, which now put the VINs of all totaled

vehicles in the public domain. A similar effort in this country would include the following elements:

- Transparency: More complete DMV and total loss data should be provided. Most state DMVs are collecting the necessary title data about damaged vehicles, but there are exceptions. The motor vehicle title laws of each should provide a threshold level of disclosure to capture significant damage to a vehicle. Also, the states should move to more uniform classification of title data. Insurance companies should provide total loss data (VIN, odometer reading, and date of declaration of total loss, and reason for total loss) to the information industry, which could then incorporate the data into vehicle history reports. Similarly, salvage auctions should provide sales data (VIN, odometer reading, date of salvage auction sale).
- Timing: DMV data should be released daily and total loss data should be released to the general public when the total loss occurs – whether or not the total loss triggers a filing under state motor vehicle titling laws. Title histories provide key data that dramatically affect fair market value and may raise safety-related concerns. Yet, as many as 30 to 60 days may pass between the time a vehicle is damaged and the time that data reflecting that damage are publicly available. The DMVs, insurance companies and salvage auctions need to work with the private sector to reduce this timeframe, because the delay facilitates criminal activity.
- Technology: The DMVs and the insurance companies should work with the private sector information industry to make vehicle history data more accessible

to the general public. State title agencies exist to document ownership after the transaction, so they do not have the sufficient statutory charge or corporate culture to obtain, package and market data to the general public. The information industry in the private sector should have access to insurance company information for total loss vehicles and salvage auction sales data. Additionally, DMVs should make title data commercially available in bulk on a daily basis to the information industry. This information, marketed to consumers by private sector companies, would enable consumers to have more information before buying a vehicle. This level of public disclosure would strike at the heart of the economic model of the fraudulent rebuilders and resellers.

#### **Comments about the National Motor Vehicle Title Information System (NMVTIS)**

**Congress has recognized that technology should play a critical role in this arena.**

The Anti-Car Theft Act of 1992 authorized the creation of NMVTIS. As envisioned, NMVTIS would become the single source for title history data from all 51 jurisdictions. AAMVA has attempted to link all 51 databases in real-time using a combination of federal funds, state funds, and internal resources. The system envisioned would provide real-time, title clerk-to-title clerk linkage and then provide third party access to title histories. NMVTIS has not been completed because state resources are required to reconfigure state DMV systems to communicate with NMVTIS. AAMVA's attempts to design and implement a system to provide public access to NMVTIS have failed.

**NMVTIS, in its current form, will not solve the problem.** AAMVA should be commended for pursuing a national technological solution. Since NMVTIS is a system designed for DMVs by DMVs, the system is designed to meet the needs of title clerks not the general public. The existing economic model of NMVTIS – relying exclusively on public funding – is not sustainable. Unless the system can generate income through the sale of data to the general public (VIN-based information that does not include vehicle ownership identifiers), the future of the system is in doubt. DMVs are extremely proprietary with respect to title data. Also, some states are required to charge the same fee for an electronic title history as they would for a paper record. The combination of state statutory constraints and the “ownership” mentality of the DMVs will cripple any chances that NMVTIS will ever market title data to the general public.

**Private sector information vendors are essential to the distribution of data to consumers.** Any NMVTIS-based solution must rely on the private sector to package and market title histories to the general public. These vendors already buy title data from DMVs in bulk, usually every month. If the states simply provided daily electronic updates instead of monthly, the private sector could use technology to close the window for fraud. The end result would be an efficiently administered, up-to-date system that would provide consumers with more timely information. The very same technology could be used to provide title clerk to title clerk access as well.

## **Potential Legislative Solutions**

**Congress should require the Department of Justice to implement the 1992 Anti-Car Theft Act to require insurance companies to disclose total loss data and salvage auctions to disclose sales data.** DOJ has existing statutory authority to create more motor vehicle title transparency in a matter of months. 49 U.S.C. §§ 30501-30505. Congress should compel DOJ to initiate the rulemaking that was originally intended and enforce the penalties under existing law for failing to submit data to NMVTIS. The rule should: 1) recognize that NMVTIS has been created; 2) require insurance companies to submit to NMVTIS VIN-based information on total loss vehicles; 3) require salvage auctions and junk yards to submit to NMVTIS VIN-based information for vehicles sold at salvage auctions and junk yards; 4) require NMVTIS to engage a private sector joint venture partner to market the NMVTIS data to consumers no later than December 31, 2006; and 5) encourage state DMVs to submit VIN-based motor vehicle title and registration data to NMVTIS in electronic batch form every 24 hours. All data marketed to the public must comply with Federal and state privacy protection statutes.

**NMVTIS should be reconfigured to focus on providing consumers transparency prior to a transaction.** The vast majority of the resources of NMVTIS have been used in an attempt to link DMVs so that title clerks can talk to title clerks electronically before issuing new titles. Unfortunately, most title fraud occurs before a title clerk ever sees an application for a new title. Most DMVs exist to document motor vehicle ownership after

a transaction has occurred. Moreover, DMVs do not have the statutory authority, expertise, or financial resources to package and market VIN history data to the public.

**In contrast, there is an active, innovative, and highly competitive information industry that could provide more complete, timely and accurate vehicle title histories.** The DMVs and the private sector must work together more aggressively to enhance consumer access to title history data.

**All states should “carry forward” prior brands when issuing new titles.** This requirement is one of the first steps necessary to provide a “closed loop” system. Once any state brands a vehicle, every subsequent jurisdiction titling and registering that vehicle must carry forward all previous brands of all previous jurisdictions. For example, if Virginia brands a title as a flood vehicle and the car is re-titled in Kentucky, the Kentucky title should carry the notation “VA-FL” (an abbreviation for Virginia-Flood Damage). Just as important, this carry forward requirement would require every state to carry forward previous brands on duplicate titles issued within the same jurisdiction. In short, interstate and intrastate brand carry forward is critical.

**In addition to placing the brands on titles, states should brand registrations as well.** Owners often do not see a title if the vehicle is subject to a lien, but every owner receives a registration document.

**Congress should encourage all states to, at a minimum, brand vehicles within these four basic categories to capture the most relevant data for vehicle purchasers: salvage, rebuilt salvage, flood, and non-repairable.** The most significantly damaged vehicles are covered by the following brands in most states: salvage, rebuilt salvage, flood, and non-repairable. To avoid needless confrontation over the exact wording of definitions, the states should retain flexibility in defining these terms.

**All states should make existing title data readily available on a cost structure that reflects electronic records rather than paper records.** Currently, private sector information vendors such as CARFAX and Auto Check buy title history data in bulk and aggregate the data from various states to provide title histories to consumers. The states sell this data in bulk to these vendors and the lag time may be as long as 60 days. The laws of some states have not been updated to reflect economic commerce. Congress could encourage the states to make title data more available so that data vendors can obtain daily downloads of active title and registration and brand files.

**All states should be encouraged to move to electronic titling of motor vehicles.** If every state DMV issued electronic titles, the benefits to the consumer would be significant. Title histories would be more readily available, and the perfection and release of liens, an essential element of motor vehicle commerce, would be more efficient. An electronic titling regime does not mean the elimination of paper titles, because paper titles will be necessary for years to come to facilitate consumer-to-consumer transactions.



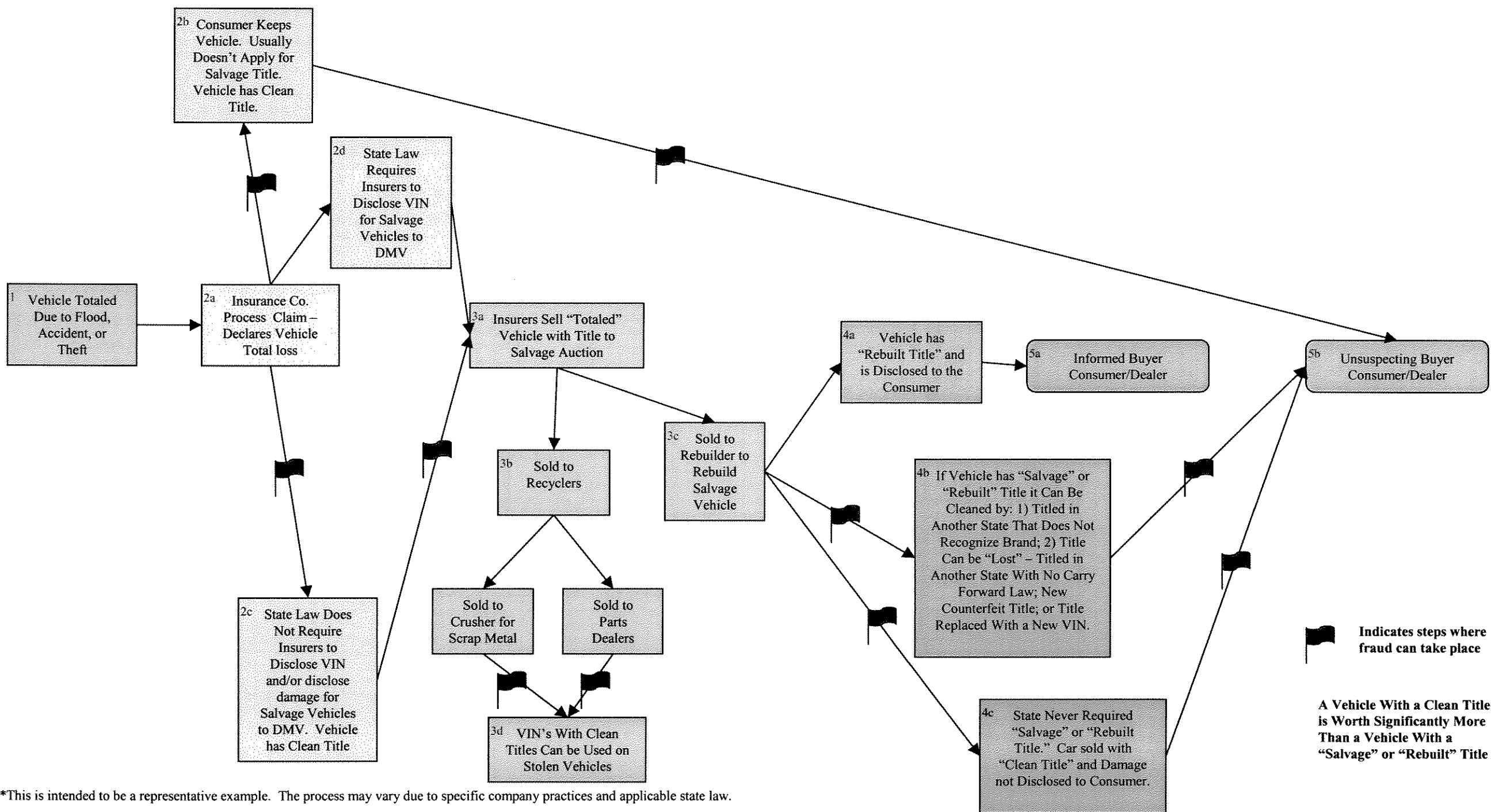
**Any federal remedies must reflect federalism.** Motor vehicle titling laws fall within the jurisdiction of the states. Federal preemption of this state-based regulatory regime could be challenged under the Tenth Amendment to the U.S. Constitution. To limit such a challenge, Congress could use incentives (provide grant money) or penalties (withhold certain Federal funds) to encourage states to change their respective motor vehicle titling laws promptly.

### **Conclusion**

**Any solution to the title fraud problem must be viewed through the pre-transaction lens.** The technological solution to the problem of flood vehicles – and all other title fraud – lies in creating near real-time, pre-transaction access to the vehicle history data that DMVs, insurance companies, and salvage yards currently collect.

NADA and automobile dealers throughout the country are prepared to assist with efforts to eliminate title fraud. Thank you for the opportunity to present our views, and I look forward to your questions.

## How Total Loss Vehicles Reenter the Market



\*This is intended to be a representative example. The process may vary due to specific company practices and applicable state law.